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**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	:
	:
<b>LEHMAN BROTHERS HOLDINGS INC., et al.,</b>	:
	:
<b>Debtors.</b>	:
	:
	:
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<b>SECURITIES INVESTOR PROTECTION</b>	:
<b>CORPORATION</b>	:
<b>Plaintiff</b>	:
	:
<b>v.</b>	:
	:
<b>LEHMAN BROTHERS INC.,</b>	:
	:
<b>Debtor.</b>	:
	:
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**LEHMAN BROTHERS HOLDINGS INC. ET AL.'S AMENDED STATEMENT**  
**OF ISSUES PRESENTED ON APPEAL AND COUNTERDESIGNATION**  
**OF ADDITIONAL ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**  
**IN CONNECTION WITH THE APPEAL OF BAY HARBOUR**  
**MANAGEMENT L.C., BAY HARBOUR MASTER LTD. ET AL.**  
**FROM ORDERS OF BANKRUPTCY COURT ENTERED SEPTEMBER 20, 2008**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure,  
Lehman Brothers Holdings Inc. ("LBHI") and its affiliated chapter 11 debtors  
(collectively, the "Debtors"), submit the following statement of issues presented on

appeal and counterdesignation of additional items to be included in the record in connection with the appeal of Bay Harbour Management L.C., Bay Harbour Master Ltd., Trophy Hunter Investments, Ltd., BHCO Master, Ltd., MSS Distressed & Opportunities 2 and Institutional Benchmarks (collectively, “Bay Harbour” or “Appellants”) from the following orders of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) (James M. Peck, B.J.), entered on September 20, 2008: (i) Order Under 11 U.S.C. §§ 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006 Authorizing and Approving (A) the Sale of Purchased Assets Free and Clear of Liens and Other Interests and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases, entered in the chapter 11 cases of the Debtors; and (ii) Order Approving, and Incorporating by Reference for the Purposes of [the SIPA] Proceeding, an Order Authorizing the Sale of Purchased Assets and Other Relief in the Lehman Brothers Holdings, Inc. Chapter 11 Proceeding, entered in the Securities Investor Protection Act proceeding against Lehman Brothers Inc. (the “SIPA Proceeding”) (together, the “Orders”).<sup>1</sup>

### **STATEMENT OF ISSUES ON APPEAL**

1. In the face of uncontroverted evidence of intensive, aggressive, arm’s-length negotiations of the sale transaction by LBHI to Barclays Capital Inc. (“Barclays”), did the Bankruptcy Court commit a plain error of law or an abuse of discretion in specifically finding that the sale was made in good faith by Barclays and LBHI?

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<sup>1</sup> The Debtors reserve the right to amend this counterdesignation of additional items to be included in the record on appeal. For items designated, the designation includes all documents referenced within the particular document number, including, without limitation, all exhibits, attachments, declarations, and affidavits related thereto.

2. Is the appeal from the Orders moot by reason of (a) Appellants' failure to seek and obtain a stay of execution of the Orders and (b) the consummation of the sale to Barclays?

**COUNTERDESIGNATION OF RECORD**

**Case No. 08-13555 (JMP (Chapter 11 Cases))**

<b>Designation Number</b>	<b>Date of Filing</b>	<b>Docket Number</b>	<b>Description</b>
1	9/15/2008	1	Voluntary Petition (Chapter 11). Order for Relief Entered
2	9/15/2008	2	Affidavit of Ian T. Lowitt Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First-Day Motions and Applications
3	9/15/2008	3	Debtor's Motion, Pursuant to Section 105 of the Bankruptcy Code, for an Order Enforcing the Protections of Section 362 of the Bankruptcy Code
4	9/15/2008	4	Corporate Ownership Statement Pursuant to Federal Rule of Bankruptcy Procedure 1007(a)(1) and Local Rule of Bankruptcy Procedure 1007-3
5	9/15/2008	5	Debtor's Motion Pursuant to Bankruptcy Rules 1007(c) and 2002(d) (i) Extending the Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs and (ii) Waiving of the Requirements to File the Equity List and Provide Notice to Equity Security Holders
6	9/15/2008	6	Debtor's Motion Pursuant to Section 105(a) of the Bankruptcy Code and Local Bankruptcy Rule 1007-2(d) for Waiver of the Requirements of Local Bankruptcy Rule 1007-2(b)
7	9/15/2008	7	Debtor's Motion Pursuant to Section 105(a), 342(a), and 521(a)(1) of the Bankruptcy Code, Bankruptcy Rules 1007(a) and 2002(a), (f), and (l), and Local Bankruptcy Rule 1007-1 for (i) a Waiver of the Requirements to File a List of Creditors and (ii) Approval of the Form and Manner of Notifying Creditors of the Commencement of the Debtor's Chapter 11 Case
8	9/15/2008	15	Amended Corporate Ownership Statement Pursuant to Federal Rule of Bankruptcy Procedure 1007(a)(1)

<b>Designation Number</b>	<b>Date of Filing</b>	<b>Docket Number</b>	<b>Description</b>
			and Local Rule of Bankruptcy Procedure 1007-3
9	9/16/2008	23	Notice of Commencement of Chapter 11 Case and First Day Motions
10	9/16/2008	29	Motion of Lehman Brothers Holdings Inc. for Order, Pursuant to Section 105 of the Bankruptcy Code, Confirming Status of Clearing Advances
11	9/16/2008	30	Notice of Adjournment of Hearing on First Day Motions
12	9/16/2008	31	Statement of JPMorgan Chase Bank, N.A. in Support of Motion of Lehman Brothers Holdings Inc. for Order, Pursuant to Section 105 of the Bankruptcy Code, Confirming Status of Clearing Advances
13	9/16/2008	47	Order Confirming Status of Clearing Advances
14	9/16/2008	48	Order Enforcing the Protections of Section 362 of the Bankruptcy Code
15	9/16/2008	49	Order Extending the Time to Comply with the Requirements of Local Bankruptcy Rule 1007-2(a) and 1007-2(b)
16	9/16/2008	52	Order Extending the Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs and (ii) Waiving of the Requirements to File the Equity List and Provide Notice to Equity Security Holders Through and Including November 14, 2008
17	9/16/2008	53	Order Waiving of the Requirements to File a List of Creditors and (ii) Approving the Form and Manner of Notifying Creditors of the Commencement of the Debtor's Chapter 11 Case
18	9/17/2008	56	Debtor's Motion Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure Requesting Joint Administration of Chapter 11 Cases
19	9/17/2008	57	Motion Pursuant to Section 105(a) of the Bankruptcy Code for an Order Directing that Certain Orders in the Chapter 11 Case of Lehman Brothers Holdings Inc. Be Made Applicable to LB 745 LLC
20	9/17/2008	58	Notice of Hearing to be held on 9/17/2008 at 11:00 a.m.
21	9/17/2008	59	Debtor's Motion for Order: (i) Authorizing the Debtor to Obtain Postpetition Financing Pursuant to Sections 363 and 364 of the Bankruptcy Code, (ii) Granting Liens and Superpriority Claims to Postpetition Lenders Pursuant to Section 364 of the

Designation Number	Date of Filing	Docket Number	Description
			Bankruptcy Code, and (iii) Scheduling Final Hearing
22	9/17/2008	61	Notice of Agenda of Matters Scheduled for Hearing on September 17, 2008
23	9/17/2008	62	Appointment of Official Creditors' Committee
24	9/17/2008	65	Notice of Adjournment of Hearing to be held on 9/17/2008 at 4:00 p.m.
25	9/17/2008	79	Affidavit of Service of Herb Baer of Epiq Bankruptcy Solutions, LLC
26	9/17/2008	80	Affidavit of Service of Bridget Gallerie of Epiq Bankruptcy Solutions, LLC
27	9/17/2008	86	Order Directing Joint Administration for Case Number 08-13555 (Lehman Brothers Holdings Inc.) and Case Number 08-13600 (LB 745 LLC)
28	9/17/2008	87	Order Directing that Certain Orders in the Chapter 11 Case Lehman Brothers Holdings Inc. Be Made Applicable to LB 745 LLC
29	9/17/2008	88	Order (I) Approving the Break-Up Fee and Expense Reimbursement, (II) Certain Matters Relating to Competing Bids, If Any, (III) Approving the Form and Manner of Sale Notices and (IV) Setting the Sale Hearing Date in Connection with the Sale of Certain of the Debtors' Assets
30	9/17/2008	89	Interim Order (I) Authorizing the Debtor to Obtain Postpetition Financing, (II) Granting Liens and Superpriority Claims to Postpetition Lenders and (III) Scheduling a Final Hearing to be Held on 10/2/2008
31	9/17/2008	91	Transcript of Hearing Held on 9/16/08
32	9/18/2008	107	Notice of Assumption and Assignment of, and Amounts Necessary to Cure Defaults Under Contracts and Leases to be Assumed and Assigned to Successful Purchaser
33	9/18/2008	109	Motion of Debtors for Order, Pursuant to Section 105 of the Bankruptcy Code, Confirming Status of Citibank Clearing Advances
34	9/18/2008	110	Statement of Citigroup Inc. in Support of Motion of Debtors for Order, Pursuant to Section 105 of the Bankruptcy Code, Confirming Status of Citibank Clearing Advances
35	9/19/2008	201	Copy of Certified Order Transferring Case No. 08CV8119 [the SIPA Proceeding] from the U.S. District Court, S.D.N.Y. to the U.S. Bankruptcy Court, S.D.N.Y.

Designation Number	Date of Filing	Docket Number	Description
36	9/19/2008	203	Complaint against Lehman Brothers Inc.; Order signed by United States District Court Judge Gerard E. Lynch [in the SIPA Proceeding]
37	9/19/2008	205	Notice of Agenda of Matters Scheduled for Hearing on September 19, 2008 at 4:00 p.m.
38	9/19/2008	237	Affidavit of Service of Herb Baer of Epiq Bankruptcy Solutions, LLC
39	9/19/2008	239	Affidavit of Service of Robert Saraceni of Epiq Bankruptcy Solutions, LLC
40	9/19/2008	242	Affidavit of Service of Regina Amporfro of Epiq Bankruptcy Solutions, LLC
41	9/22/2008	280	Notice of Filing of Purchase Agreement Approved by Order Under 11 U.S.C. 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006 Authorizing and Approving (a) the Sale of Purchased Assets Free and Clear of Liens and Other Interests and (b) Assumption and Assignment of Executory Contracts and Unexpired Leases <sup>2</sup>
42	9/22/2008	284	Order Confirming Status of Citibank Clearing Advances
43	9/23/2008	298	Notice of Final Hearing (i) Authorizing Debtor to Obtain Postpetition Financing Pursuant to Sections 363 and 364 of the Bankruptcy Code, (ii) Granting Liens and Superpriority Claims to Postpetition Lenders Pursuant to Section 364 of the Bankruptcy Code
44	9/23/2008	318	Transcript of Hearing Held on 9/19/2008 <sup>3</sup> [to Approve Sale]
45	9/22/2008	352	Transcript of Hearing Held on September 17, 2008 <sup>4</sup> [to Approve Sale Procedures]
46	9/26/2008	376	Debtors' Motion Pursuant to Sections 105, 365, and

<sup>2</sup> While Appellants' Designation of Record, dated October 1, 2008 (the "Designation of Record"), lists Docket No. 280, it does so only with respect to the Asset Purchase Agreement and the First Amendment to the Asset Purchase Agreement, which are Exhibits A and B to the Notice. It does not list Exhibit C, which is the Executed Clarification Letter.

<sup>3</sup> Appellants' Designation of Record erroneously describes Docket No. 318 as "Transcript of Proceeding before the Bankruptcy Court on September 17, 2008."

<sup>4</sup> Appellants' Designation of Record erroneously describes Docket No. 352 as "Transcript of Proceeding before the Bankruptcy Court on September 19-20, 2008."

<b>Designation Number</b>	<b>Date of Filing</b>	<b>Docket Number</b>	<b>Description</b>
			554(a) of the Bankruptcy Code to Establish Procedures for the Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Property and Abandonment of Related Personal Property
47	9/26/2008	378	Declaration of Shai Y. Waisman in Support of Order to Show Cause Scheduling a Hearing to Consider Debtors' Motion Pursuant to Sections 105, 365, and 554(a) of the Bankruptcy Code to Establish Procedures for the Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Property and Abandonment of Related Personal Property
48	9/26/2008	380	Order to Show Cause Fixing Hearing Date to Consider the Motion Filed by the Debtors to Establish Procedures for the Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Property and Abandonment of Related Personal Property
49	9/26/2008	388	Joinder [of James W. Giddens, as Trustee for the SIPA Liquidation of Lehman Brothers Inc.] in Debtors Motion Pursuant to Sections 105, 365, and 554(a) of the Bankruptcy Code to Establish Procedures for the Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Property and Abandonment of Related Personal Property
50	9/29/2008	392	Notice of Adjournment of Final Hearing (i) Authorizing Debtor to Obtain Postpetition Financing Pursuant to Sections 363 and 364 of the Bankruptcy Code, (ii) Granting Liens and Superpriority Claims to Postpetition Lenders Pursuant to Section 364 of the Bankruptcy Code
51	9/29/2008	430	Joint Motion of the Debtors and Barclays Capital Inc. for Entry of an Order Authorizing [the Filing] Under Seal [of] Certain Schedules to the Asset Purchase Agreement, dated September 29, 2008
52	10/01/2008	504	Notice of Revisions to Schedules of Certain Contracts and Leases Assumed and Assigned to Purchaser [Barclays Capital Inc.]

<b>Designation Number</b>	<b>Date of Filing</b>	<b>Docket Number</b>	<b>Description</b>
53	10/02/2008	564	Notice of Revised Exhibit A to Notice of Revisions to Schedules of Certain Contracts and Leases Assumed and Assigned to Purchaser [Barclays Capital Inc.]
54	10/03/2008	568	Notice of Presentment of Order Authorizing the Debtors and Barclays Capital Inc. to File Under Seal Certain Schedules to the Purchase Agreement
55	10/03/2008	628	Order Granting the Debtors' Motion to Establish Procedures for the Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Property and Abandonment of Related Personal Property
56	9/15/2008-10/10/2008	N/A	Docket for <i>Lehman Brothers Holdings Inc., et al.</i> , Ch. 11 Case No. 08-13555 (JMP)



**Case No. 08-01419 (JMP) (SIPA Proceeding)**

<b>Designation Number</b>	<b>Date of Filing</b>	<b>Docket Number</b>	<b>Description</b>
57	9/19/2008	1	Copy of Certified Order Transferring Case No. 08CV8119 from the U.S. District Court, S.D.N.Y. to the U.S. Bankruptcy Court, S.D.N.Y.
58	9/20/2008	5	Affidavit of Service filed by Jeffrey S. Margolin on behalf of James W. Giddens, Trustee for the SIPA Liquidation of Lehman Brothers, Inc.
59	10/01/2008	6	Order Directing the Closing of this Adversary Proceeding

**Case No. 08-01420 (JMP) (SIPA Proceeding)**

<b>Designation Number</b>	<b>Date of Filing</b>	<b>Docket Number</b>	<b>Description</b>
60	9/19/2008	1	Order [in SIPA Proceeding] Commencing Liquidation by United States District Court Judge, Gerard E. Lynch
61	9/20/2008	4	Affidavit of Service filed by Jeffrey S. Margolin on behalf of James W. Giddens, Trustee for the SIPA Liquidation of Lehman Brothers, Inc.
62	9/25/2008	9	Notice of Presentment of Stipulation filed by Jeffrey S. Margolin on behalf of James W. Giddens, Trustee for the SIPA Liquidation of Lehman Brothers Inc.
63	9/25/2008	16	Amended Notice of Presentment of Stipulation and Order in Connection with the Assumption and Assignment of Financial Services Agreements
64	9/29/2008	28	Trustee's Motion to Adopt and Incorporate by Reference an Order Establishing Procedures for Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Estate Property and Abandonment of Related Personal Property, as Entered in the Chapter 11 Proceedings
65	9/29/2008	30	Order to Show Cause Fixing a Hearing Date to Consider the Motion filed by the Trustee to Adopt and Incorporate by Reference an Order Establishing Procedures for Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Estate Property and Abandonment of Related Personal Property, as Entered in the Chapter 11 Proceedings
66	9/29/2008	33	So Ordered Stipulation and Order in Connection

Designation Number	Date of Filing	Docket Number	Description
			with the Assumption and Assignment of Financial Services Agreements
67	10/01/2008	44	Order Directing the Closing of Duplicate Adversary Proceeding No. 08-1419
68	10/01/2008	47	Notice of Revisions to Schedules of Certain Contracts and Leases Assumed and Assigned to Purchaser
69	10/02/2008	51	Notice of Revised Exhibit A to Notice of Revisions to Schedules of Certain Contracts and Leases Assumed and Assigned to Purchaser
70	9/19/2008-10/10/2008	N/A	Docket for <i>Securities Investor Protection Corporation v. Lehman Brothers Inc.</i> , Case No. 08-01420 (JMP)

Dated: New York, New York  
October 10, 2008

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